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9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**
11

12 PETITION TO AMEND
13 ARIZONA SUPREME COURT
14 RULE 38(i)

Supreme Court No. R-_____

**Petition to Amend Rule 38(i),
Arizona Rules of the Supreme Court**

15 The State Bar of Arizona (“the State Bar”) hereby petitions the Court,
16 pursuant to Rule 28, Ariz. R. Sup. Ct., to amend or clarify the language relative
17 to the continuing legal education requirement of registered in-house counsel.

18 In-house counsel (“IHC”), who must register with the State Bar if not
19 already members, should be required to perform at least some continuing legal
20 education each year, just as State Bar members must. Under the current rule,
21 however, some IHC registrants do not have to comply with any continuing legal
22 education requirement, either because they are inactive in the state in which
23 they are admitted to practice or because their home state does not require
24 lawyers to meet continuing legal education requirements.

25 **DISCUSSION**

“In-house counsel,” as defined in Rule 38(i), Ariz. R. Sup. Ct., refers to
an attorney who is employed within the State of Arizona as in-house counsel
“or a related position for a for-profit or a non-profit corporation, association, or

1 other organizational entity, which can include its parents, subsidiaries and/or
2 affiliates, the business of which is lawful and is other than the practice of law or
3 the provision of legal services.”

4 The in-house counsel rule took effect in January 2009; and since then,
5 questions have been raised as to the intent and interpretation of certain language
6 in the following subparagraphs:

7 Rule 38(i)(2) states that, in addition to having graduated from
8 an American Bar Association approved law school, the IHC applicant
9 must be “a member in good standing of the bar of another state or the
10 District of Columbia, or eligible to practice before the highest court
11 in any state, territory or insular possession of the United States[.]”

12 Rule 38(i)(9) states that, in addition to entitlement to benefits
13 and responsibilities the same as active members of the Bar, the IHC
14 lawyer “shall satisfy the continuing legal education requirements, *if*
15 *any*” (emphasis added) of at least one of the other state(s) or
16 jurisdiction(s) in which that lawyer is admitted to practice law.

17 In order for IHC registrants to confirm that they were in compliance with
18 the continuing legal education requirements, if any, of at least one other state or
19 jurisdiction where they were admitted, registrants were requested to file an
20 affidavit of compliance for the 2009-10 educational year on the same schedule
21 as active members of the Bar. The IHC registrants were not required to list
22 their CLE events and hours; they needed only to submit their affidavits
23 indicating compliance with the CLE requirements, if any, in at least one
24 jurisdiction of admission.
25

1 Seven states/jurisdictions have no mandatory legal education
2 requirements; namely, Connecticut, the District of Columbia, Maryland,
3 Massachusetts, Michigan, Hawaii and South Dakota. The Bar fully anticipated
4 IHC registrants admitted in those jurisdictions to indicate that their state had no
5 CLE requirements.

6 However, it was not anticipated that there would be many IHC registrants
7 indicating no CLE compliance or requirement in their state(s) of admission
8 because they were on inactive status and have remained inactive since
9 relocating and registering as IHCs with the State Bar.

10 The language of Rule 38(i)(2) requires only that the applicant be in good
11 standing, which, in the majority of states and jurisdictions, includes the
12 category of inactive status. Moreover, inactive status, just as in Arizona,
13 typically eliminates the requirement of continuing legal education until active
14 status is resumed.

15 There are approximately 220 registered IHCs at this time. Presumably
16 these individuals represent corporations that conduct business in Arizona.
17 Those businesses/entities most likely will interact with the public in Arizona;
18 and it is just as likely that such a corporation and its registered IHC lawyer(s)
19 will have direct contact with Arizona attorneys and their respective corporate or
20 individual clients.

21 The Court and the Bar share the belief that continuing legal education is
22 an important factor in developing and maintaining the best levels of skill,
23 competency and knowledge of those attorneys who are practicing in Arizona.
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1 In addition, requiring IHC registrants to demonstrate compliance with
2 mandatory CLE comports with the language of current Court rules, such as
3 Rule 32(a):

4 1. Establishment of state bar. In order to advance the
5 administration of justice according to law, to aid the courts in
6 carrying on the administration of justice; to provide for the
7 regulation and discipline of persons engaged in the practice of law;
8 *to foster and maintain on the part of those engaged in the practice*
9 *of law high ideals of integrity, learning, competence and public*
10 *service, and high standards of conduct; to provide a forum for the*
11 *discussion of subjects pertaining to the practice of law, the science*
12 *of jurisprudence, and law reform; to carry on a continuing*
13 *program of legal research in technical fields of substantive law,*
14 *practice and procedure,. . . [and] to encourage practices that will*
15 *advance and improve the honor and dignity of the legal*
16 *profession[.]* (Emphasis added).

17 The present language of Rule 38(i)(9) provides that IHC registrants shall
18 be entitled “to” the benefits and *responsibilities* of active members of the State
19 Bar. (Emphasis added). Therefore, the State Bar petitions the Court to amend
20 Rule 38(i)(9) to clearly specify that IHC registrants must satisfy a continuing
21 legal education requirement. This may be accomplished by compliance with
22 the MCLE requirements of the other jurisdiction(s) in which they are admitted.
23 Absent a mandatory CLE requirement in another jurisdiction(s), an IHC should
24 be required to be compliant with Arizona’s continuing education requirements.

25 The text of an amended Rule 38(i)(9) is provided in Addendum A hereto.

CONCLUSION

IHC registrants now have a significant presence in the Arizona legal
community. Clients, the public, and the legal community as a whole must have

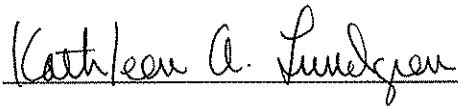
1 assurance that IHC registrants are working hand in hand with the entire legal
2 community with respect to skills, expertise, and continuing legal education.

3 The State Bar therefore requests that the Court amend Rule 38 to
4 accomplish this.

5 RESPECTFULLY SUBMITTED this 5th day of January, 2011.

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8 
9 John A. Furlong
10 General Counsel

11 Electronic copy filed with the
12 Clerk of the Supreme Court of Arizona
13 this 5th day of January, 2011

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15 By: 
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APPENDIX A

Revised text of Supreme Court Rule 38(i)(9):

Rule 38(i)(9) Except as provided in this rule, the holder of a valid and current Registration Certificate shall be entitled to the benefits and responsibilities of active members of the State Bar of Arizona, and shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the laws and rules of this state governing the conduct and discipline of attorneys to the same extent as an active member of the State Bar. A Registration Certificate shall not authorize the registrant to provide legal services to any person or entity other than the one for which the registrant serves as in-house counsel, or its parents, subsidiaries or affiliates, or to engage in activities for which admission *pro hac vice* is required under Rule 38(a) of these rules. A lawyer that has been issued a Registration Certificate under this rule shall satisfy the continuing legal education requirements, ~~if any,~~ of at least one of the other state(s) or jurisdiction(s) in which that lawyer is admitted to practice. Absent a mandatory continuing legal education requirement in the other state(s) or jurisdiction(s), the registrant shall comply with Arizona's continuing legal education requirements. On or before September 15 of each calendar year, every registered in-house counsel shall file an affidavit demonstrating full compliance with this rule."